

REMARKS

On May 20, 2010, Applicant submitted an Amendment in response to the Office Action dated January 21, 2010. On September 9, 2010, a Notice of Non-Compliant Amendment was issued in which the Examiner stated that because the only claims presented in the May 20, 2010 submission were considered to be withdrawn, the Amendment was considered to be non-responsive. While Applicant does not agree with the Examiner's determination, Applicant is submitting the present Amendment in response to both the January 21, 2010 Office Action and the September 9, 2010 Notice of Non-Compliant Amendment.¹

As an initial matter, Applicant has canceled Claims 1-2, 4, 6-8, 10-11, 13 and 16-17 without prejudice. Additionally, Claims 3 and 15 have been amended. No new matter is added by these amendments, and support can be found in canceled Claims 11 and 13 as well as in the application at, *inter alia*, ¶¶ 0001, 0009 and 0021. After the amendments, Claims 3, 5, 9, 12 and 14-15 are pending.

Turning to substantive matters, the Examiner rejected Claims 3, 5, 9, and 11-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,857,853 ("McMann"). In response, Applicant avers that this rejection is rendered moot as to now-cancelled Claims 11 and 13. Additionally, Claims 3, 5, 9, 12 and 14-15 are not anticipated by McMann because McMann does not teach a container cover wherein the annular contact portion can have a protrusion that independently engages an outer surface of a container to be covered. Rather, McMann requires that the annular contact portion's protrusion dependently engage a portion of the container to be covered. *See* McMann at Col. 2, lines 14-16 ("The top inner portion of the flange 22 is shaped to **cooperate closely** with the undercut or shoulder 16 of the rim") (**emphasis added**); *see also* Fig 2.

More particularly, the present invention does not rely on an interaction between the protrusion and an undercut or shoulder of a container in order to be attached to that container; rather, the present invention's structure renders it capable of engaging any sized/shaped container independent of the size/shape of the container. In contrast, McMann relies on an interaction between the protrusion and an undercut or shoulder of

¹ It is Applicant's understanding that the May 20, 2010 submission has not been entered; therefore, prior to the present amendments, the claims are those presented in Applicant's January 11, 2010 submission.

the container in order to be attached to that container. That is, McMann's cover can only engage a container for which it was specially made; due to its structure, McMann (unlike the present invention) is not capable of engaging a container irrespective of the size or shape of the container. Therefore, because McMann does not anticipate the present invention, Applicant respectfully requests removal of this ground of rejection.

It is Applicant's belief that because a Request for Continued Examination ("RCE") with fee was properly filed on May 20, 2010, an additional RCE and fee are not now required. Notwithstanding, if an additional RCE is required, then Applicant respectfully requests continued examination of the above-identified application; if an additional fee is required, the Commissioner is authorized to charge Deposit Account No. 50-5222 for any required fees or to debit any overpaid fees.

Based on the above, Applicant respectfully submits that the claims of the present invention are in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,

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